

Allen & Allen Update on Securities Law

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CSA Proposes Blueprint for Uniform Securities Law in Canada

The Canadian Securities Administrators ("CSA") are publishing for comment a "Concept Proposal" for its uniform securities legislation project. These are the more significant proposals:

- A streamlined system for inter-jurisdictional registration of firms and individuals.
- A civil liability regime for secondary market participants.
- A streamlined Securities Act.
- The ability for a securities regulator to delegate decision-making across all regulatory functions to another securities regulator.

Status of Proposed Continuous Disclosure Rule - No changes expected until 2004

On June 21, 2002, the CSA published for comment National Instrument 51-102 Continuous Disclosure Obligations, which would replace current requirements for reporting issuers with new requirements regarding financial statements, annual information forms, management discussion and analysis (MD&A), material change reporting, information circulars, proxies and proxy solicitation, restricted share disclosure, and other matters. The CSA expect to publish a revised instrument for comment by mid-2003.

Four month holds for all reporting issuers, once new Continuous Disclosure rule in force - Multilateral - Proposed

Ontario, BC, Alberta, Manitoba and Saskatchewan are proposing to replace the current resale Rule 45-102. Currently, securities distributed under an exemption by a reporting issuer are restricted for either four or twelve months, depending on whether the issuer is a "qualifying issuer" (A "qualifying issuer" is a reporting issuer or equivalent, who is an electronic filer under SEDAR, who has filed a current Annual Information Form, and who either has a class of equity securities listed or quoted on certain specified exchanges or markets, or outstanding securities that have received an approved rating.) With the introduction of new, harmonized, enhanced, continuous disclosure rules applicable to all reporting issuers (see proposal 51-102 above), the CSA propose to eliminate the distinction between qualifying issuers and other reporting issuers, and impose a uniform four month hold.

Oil and Gas reserves - annual reporting - proposed Nationally

The Canadian Securities Administrators (CSA) have revised its proposed oil and gas disclosure standards. Public oil and gas issuers would be required to annually report their oil and gas reserves and estimated net revenues, replacing the system of prospectus-triggered disclosure. Independent reserves evaluators or auditors would prepare the reports, incorporating standards and terminology set out in the Canadian Oil and Gas Evaluation Handbook. A summary of an issuer's report, and other information concerning oil and gas reserves properties and activities, would be publicly filed each year.

Mineral disclosure - new "Frequently Asked Questions" notice by CSA

National Instrument 43-101 governs how issuers disclose scientific and technical information about mineral projects to the public. It covers oral statements as well as written documents and websites. It requires that all disclosure be based on advice by a "qualified person" (a defined term) and in some circumstances that the person be independent of the issuer and the property. The Instrument also requires issuers to file technical reports at certain times and there is a prescribed format for the technical report. Issuers are required to make disclosure of reserves and resources using definitions approved by the Canadian Institute of Mining, except for coal.

A revised "Frequently Asked Questions" notice was published by the CSA on January 24, 2003 (there were two earlier notices - one on October 19, 2001 and one on February 8, 2002).

Delivering proxies by electronic means - amendments - National

The Canadian Securities Administration (CSA) other than Quebec, are adopting amendments to National Policy 11-201 Delivery of Documents by Electronic Means. In Quebec, the Commission des Valeurs Mobilières du Québec is adopting equivalent amendments to "Notice 11-201 relating to the delivery of documents by electronic means".

The policies set out general principles of how documents required to be delivered under Canadian securities law can be delivered electronically. The following amendments regarding proxies were made effective February 14, 2003:

- clarifying that the use of technologies involving the telephone can satisfy the in writing requirements for proxy documents if the technology protects the integrity of the information

- and enables a permanent, tangible record of the information to be retained for subsequent reference, and
- clarifying that an electronic signature used to execute or sign a proxy in electronic format that satisfies the in writing requirements can satisfy the proxy execution requirements.

The amendments to NP 11-201 (the "Amendments") will come into effect on February 14, 2003.

National Registration Database scheduled for end of March 31st 2003

The National Registration Database ("NRD") is scheduled to launch on March 31, 2003. Dealers, advisers, underwriters and individuals registered under securities or commodity futures legislation will be able to file registration and notice forms simultaneously in all Canadian jurisdictions except Quebec via the Internet.

Amendments to Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions

The Commission is proposing to amend Rule 61-501 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions (the "Rule") and Companion Policy 61-501CP (the "Companion Policy"). The Rule provides security holders of issuers involved in specified types of transactions with the benefits of enhanced disclosure requirements and, in certain cases, independent valuations and majority of minority security holder approval.

The proposed amendments are primarily intended to clarify grey areas, reduce the necessity for applications for exemptive relief and generally make the Rule more user-friendly. The amendments are also designed to eliminate unnecessary regulatory burdens, particularly for junior issuers.

Ontario expected to adopt new fees regime by April 14, 2003 - Proposed

The Ontario Securities Commission has resubmitted Rule 13-502 and Policy 13-502CP to the Minister of Finance. The Rule would replace current fees with "participation fees" and "activity fees" for reporting issuers, registrants and unregistered investment fund managers. The Rule is expected to come into force on April 14, 2003.

Please call if you have any questions - 416-865-0303

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